

FINAL STATEMENT OF REASONS

- a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

Section 31-002(g)(3)

Specific Purpose:

This section is being amended to include additional relevant statutory citations regarding the appointment of guardians by the juvenile court.

Factual Basis:

These amendments are necessary for clarity and consistency and to correct the existing regulations. A reference to the Welfare and Institutions (W&I) Code section 360 is necessary because it pertains to establishing a legal guardianship of a dependent child of the juvenile court. Similarly, a reference to W&I Code section 728(d) is necessary because it pertains to establishing a legal guardianship of a ward of the juvenile court. The use of these citations is consistent with the citations included in proposed Sections 31-002(k)(3) (definition of "kinship guardian") and 31-002(n)(3) (definition of "nonminor former dependent").

Handbook Section 31-002(g)(3)(A)

Specific Purpose:

This handbook section is being adopted to provide a cross-reference to the definition of "kinship guardian" in proposed Section 31-002(k)(3).

Factual Basis:

This handbook section is necessary for clarity and consistency. The definition of "kinship guardian" is new to these regulations and this handbook section will help ensure that the reader does not overlook or misconstrue the information provided.

Section 31-002(k)(3)

Specific Purpose:

This section is being adopted to provide a definition of "kinship guardian."

Factual Basis:

This section is necessary for consistency with the definition of "kinship guardian" in W&I Code sections 11362(b) (state Kin-GAP Program) and 11391(b) through (b)(2) (federal Kin-GAP Program).

This definition is also consistent with the definition of "kinship guardian" in proposed Manual of Policies and Procedures (MPP) section 45-601(k)(1) of the eligibility and assistance standards.

Overall, this definition is necessary to ensure consistency and uniformity in the statewide administration of the Kin-GAP Program.

Section 31-002(k)(4)

Final Modification:

Specific Purpose/Factual Basis:

Following the public hearing, and at its discretion, CDSS is amending the term "Kinship Guardianship Assistance Payments (Kin-GAP)" to "Kinship Guardianship Assistance Payment (Kin-GAP)." That is, the "s" is being deleted after "Payments."

This change is necessary for clarity and for consistency with preferred usage of the term in the State of California. California Department of Social Services (CDSS) uses the singular version of this term in all of its departmental communications about the Kin-GAP Program. In addition, CDSS has consistently characterized the term "Kinship Guardianship Assistance Payment" as including additional related payments, such as any applicable Special Care Increment rate or clothing allowance for the child. Please refer to page 13 of ACL 11-15.

Section 31-004(k)(4)

Specific Purpose:

This section is being adopted to provide a definition of "Kinship Guardianship Assistance Payment (Kin-GAP)."

Factual Basis:

This section is necessary for consistency with W&I Code sections 11362(a) and 11391(a), which define the aid paid on behalf of a former foster child living with a kinship guardian.

This definition is also consistent with the definition of Kin-GAP in proposed MPP section 45-601(k)(2).

Overall, this definition is necessary to ensure consistency and uniformity in the statewide administration of the Kin-GAP Program.

Section 31-002(n)(3)

Specific Purpose:

This section is being adopted to provide a definition of "nonminor former dependent."

Factual Basis:

This section is necessary for consistency with the definition of "nonminor former dependent" in W&I Code section 11400(aa). This term was added to statute by Assembly Bill (AB) 1712, Chapter 846, Statutes of 2012. It had been used previously in statute but had not been defined.

The full definition of "nonminor former dependent" in proposed Section 31-002(n)(3) is necessary for clarity and consistency within the context of the broader child welfare program regulated by Division 31. Please see the following regarding proposed Sections 31-002(n)(3)(A) and (B):

- For Kin-GAP purposes, the definition of "nonminor former dependent" in proposed Section 31-002(n)(3)(B) is consistent with the definition of "nonminor former dependent" in proposed MPP section 45-601(n). Proposed Section 31-002(n)(3)(B) is necessary to ensure consistency and uniformity in the statewide administration of the Kin-GAP Program.
- For broader child welfare purposes, proposed Section 31-002(n)(3)(A) pertains to a nonminor who is no longer a dependent of the court but is still under the general jurisdiction of the court. An upper age limit is not necessary in this section because W&I Code section 303 explicitly permits the court to retain its general jurisdiction up to age 21.
- Proposed Section 31-002(n)(3)(B), on the other hand, pertains to a nonminor whose dependency or wardship was dismissed following the establishment of a guardianship, whether it be a kinship guardianship (a requirement of the Kin-GAP Program) or a nonrelated legal guardianship (NLRG). In this section, an upper age limit of 21 was added for clarity and consistency. Eligibility for both Kin-GAP and the NLRG programs end at age 21, but statute does not specifically establish such an upper age limit.

Final Modification:

In response to public testimony, the word "or" is being added at the end of proposed Section 31-002(n)(3)(A) to further clarify that "nonminor former dependent" means a person who meets the criteria of either proposed Section 31-002(n)(3)(A) or proposed Section 31-002(n)(3)(B).

Section 31-002(n)(4) is renumbered from Section 31-002(n)(3)

Specific Purpose/Factual Basis:

This section is being renumbered from Section 31-002(n)(3) to Section 31-002(n)(4) to accommodate the addition of the preceding definition of "nonminor former dependent."

Section 31-002(r)(5)

Specific Purpose/Factual Basis:

This section is being amended to make minor editorial changes for clarity and consistency.

Section 31-002(r)(5)(A)

Specific Purpose:

This section is being adopted to conditionally expand the existing definition of "relative."

Factual Basis:

This section is necessary for consistency with the conditional, expanded definition of "relative" in W&I Code sections 11391(c)(2) through (c)(4). This expanded definition of "relative," which applies to the federal Kin-GAP Program only and was subject to federal approval of amendments to CDSS' state plan, was added to statute by AB 1712. On May 19, 2014, the federal Department of Health and Human Services notified CDSS that, effective January 1, 2014, it had approved California's request to amend its definition of a relative to include fictive kin for federal Kin-GAP purposes pursuant to W&I Code section 11391(c).

This definition is consistent with the definition of "relative" in proposed MPP sections 45-601(r)(2) and (3).

Overall, this definition is necessary to ensure consistency and uniformity in the statewide administration of the Kin-GAP Program.

Handbook Section 31-002(r)(5)(B)

Specific Purpose/Factual Basis:

This handbook section provides the text of the conditional, expanded definition of "relative" in W&I Code sections 11391(c)(2) through (c)(4). This is necessary for clarity, consistency and ease of use.

Final Modification:

In response to public testimony, the phrase "subject to federal approval of amendments to the state plan" is being deleted from handbook for clarity. As noted in the justification for proposed Section 31-002(r)(5)(A), the federal government has already approved California's request to amend its definition of a relative to include fictive kin for federal Kin-GAP purposes pursuant to W&I Code section 11391(c).

Section 31-002(v)(2)

Specific Purpose/Factual Basis:

This section is being amended to make a minor editorial change and to correct a statutory reference for clarity and consistency.

Handbook Section 31-002(v)(2)(A)

Specific Purpose:

This handbook section is being adopted to provide the statutory definition of "voluntary placement."

Factual Basis:

This handbook section is necessary for clarity, consistency and ease of use.

More specifically, this handbook section is necessary for clarity and consistency because W&I Code sections 11363(a)(2) and 11386(a)(2) provide that a Kin-GAP eligible child must reside in the approved home of a relative guardian "while under the jurisdiction of the juvenile court or a voluntary placement agreement." While these proposed regulations do not provide eligibility criteria for Kin-GAP, they will be used in conjunction with the proposed eligibility regulations in MPP section 45-600 et seq.

In addition, All County Letter (ACL) 11-15 discusses voluntary placements on page six. ACL 11-15 contains the implementing instructions for AB 12, Chapter 559, Statutes of 2010, pursuant to W&I Code section 11393(a).

Section 31-002(v)(3)

Specific Purpose/Factual Basis:

This section is being amended to correct a statutory reference for clarity, consistency and ease of use.

Handbook Section 31-002(v)(3)(A)

Specific Purpose:

This handbook section is being adopted to provide the statutory definition of "voluntary placement agreement."

Factual Basis:

This handbook section is necessary for clarity, consistency and ease of use. Please also see the justification under Section 31-002(v)(2)(A).

Section 31-003(k)(1)

Specific Purpose:

This section is being adopted to describe and to incorporate by reference, the following required form: KG 1 (12/11), Kin-GAP Mutual Agreement for 18 Year Olds. The purpose of this form is to document the mutual agreement between the placing agency and the nonminor dependent when a youth receiving Kin-GAP requests continuation of Kin-GAP payments while the youth completes high school or a vocational program prior to reaching the age of 19.

Factual Basis:

This section is necessary to implement W&I Code section 11403.01. This statute allows a Kin-GAP payment to be made on behalf of a nonminor former dependent after the age of 18 if he or she is in the process of completing high school or a vocational program (by age 19), resides with a kinship guardian and has signed a mutual agreement with the placing agency (the KG 1 form).

This section is consistent with proposed MPP section 45-601.2(k)(1). Moreover, this form is necessary for consistency and uniformity in the statewide administration of the Kin-GAP Program.

This section is also necessary to better inform social services personnel and others about the requirements of the Kin-GAP Program. While eligibility standards for Kin-GAP fall under the purview of proposed MPP section 45-600 et seq., social workers, probation

officers and tribal social services personnel need to be aware of this form so that they can provide adequate information and assistance regarding the Kin-GAP Program as needed.

Final Modification:

This form is incorporated by reference and is not printed in the CDSS MPP because it would be cumbersome and impractical; however, this form is readily available from the CDSS.

Section 31-003(k)(2)

Specific Purpose:

This section is being adopted to describe, and to incorporate by reference, the following required form: KG 3 (12/11), Kin-GAP Mutual Agreement for Nonminor Former Dependents. The purpose of this form is to document the mutual agreement between the placing agency and the nonminor former dependent when the youth receiving Kin-GAP meets the requirements for extended Kin-GAP benefits from age 18 up to age 21.

Factual Basis:

This section is necessary to implement W&I Code section 11403(b), which allows a Kin-GAP payment to be made on behalf of a nonminor former dependent after the age of 18 if certain criteria are met. This form establishes the child's Kin-GAP eligibility for continued receipt of aid after the age of 18 and up to the age of 21.

This section is consistent with proposed MPP section 45-601.2(k)(3). Moreover, this form is necessary for consistency and uniformity in the statewide administration of the Kin-GAP Program.

This section is also necessary to better inform social services personnel and others about the requirements of the Kin-GAP Program. While eligibility standards for Kin-GAP fall under the purview of proposed MPP section 45-600 et seq., social workers, probation officers and tribal social services personnel need to be aware of this form so that they can provide adequate information and assistance regarding the Kin-GAP Program as needed.

Section 31-003(s)(1)

Specific Purpose:

This section is being adopted to describe and to incorporate by reference, the following required form: SOC 369 (12/10), Agency-Relative Guardianship Disclosure.

Factual Basis:

This section is necessary to comply with W&I Code sections 11364(a) and (b) and 11387(a) and (b). Kin-GAP payments cannot be made unless the specified parties negotiate and enter into the mutual agreement documented on the SOC 369 form.

The SOC 369 form is also necessary to help inform a prospective kinship guardian of available funding and program options pursuant to W&I Code sections 11364(e) and 11387(e), such as the Kin-GAP Program and Aid to Families with Dependent Children-Foster Care (AFDC-FC).

Further, this section is necessary to implement proposed Sections 31-425.41, 31-425.412, and 31-425.42. It is also consistent with proposed MPP section 45-601.2(s)(1). Moreover, this form is necessary for consistency and uniformity in the statewide administration of the Kin-GAP Program.

Finally, this section is necessary to better inform social services personnel and others about the requirements of the Kin-GAP Program. While eligibility standards for Kin-GAP fall under the purview of proposed MPP section 45-600 et seq., social workers, probation officers and tribal social services personnel need to be aware of this form so that they can provide adequate information and assistance regarding the Kin-GAP Program as needed.

Final Modification:

In response to public testimony, an editorial correction is being made to this section to delete an unnecessary and duplicative phrase.

In addition, SOC 369 is incorporated by reference and is not printed in the CDSS MPP because it would be cumbersome and impractical; however, this form is readily available from the CDSS.

Section 31-003(s)(2)

Specific Purpose:

This section is being adopted to describe and to incorporate by reference, the following required form: SOC 369A (11/11), Kin-GAP Program Agreement Amendment. The purpose of this form is to both amend and supplement the SOC 369 form. It is used both to establish the Kin-GAP rate of payment at the initiation of the case and, as necessary, to amend the initial agreement after the Kin-GAP case has been established.

Factual Basis:

This section is necessary to comply with W&I Code sections 11364(a) and (b) and 11387(a) and (b). Kin-GAP payments cannot be made unless the specified parties

negotiate and enter into the mutual agreement documented on the SOC 369 form, which is used in conjunction with the SOC 369A form.

Like the SOC 369 form, the SOC 369A form is necessary to help inform a prospective kinship guardian of available funding and program options pursuant to W&I Code sections 11364(e) and 11387(e).

Further, this section is necessary to implement proposed Sections 31-425.41, 31-425.412 and 31-425.42. It is also consistent with proposed MPP section 45-601.2(s)(2). Moreover, this form is necessary for consistency and uniformity in the statewide administration of the Kin-GAP Program.

Finally, this section is necessary to better inform social services personnel and others about the requirements of the Kin-GAP Program. While eligibility standards for Kin-GAP fall under the purview of proposed MPP section 45-600 et seq., social workers, probation officers and tribal social services personnel need to be aware of this form so that they can provide adequate information and assistance regarding the Kin-GAP Program as needed.

Final Modification:

Following the public hearing, and at its own discretion, CDSS amended this section to update the revision date of the SOC 369A form. The SOC 369A (11/11) is now the SOC 369A (7/15). This amendment to the proposed regulations is necessary because Question No. 25 was added to page 3 of the SOC 369A, as follows: "In the event of my death or incapacitation I/we would like to become the successor guardian."

The addition of this question to the SOC 369A is necessary to comply with federal law, specifically Public Law 113-185, which was enacted September 29, 2014. Federal law now preserves a child's eligibility for Kin-GAP payments when, due to death or incapacity, a relative guardian is replaced by a successor legal guardian. In order to be eligible for continued federal Kin-GAP, a successor legal guardian must be named for the child in the Kin-GAP agreement or an amendment to the agreement. This requirement is met by the inclusion of Question No. 25 on the SOC 369A.

Sections 31-003(s)(3) through (s)(6) are renumbered from Sections 31-003(s)(1) through (s)(4)

Specific Purpose/Factual Basis:

These sections are being renumbered from Sections 31-003(s)(1) through (s)(4) to Sections 31-003(s)(3) through (s)(6) to accommodate the addition of the preceding definitions of the SOC 369 and SOC 369A forms.

Section 31-075.2

Specific Purpose/Factual Basis:

This section is being amended to make a minor editorial change for clarity and consistency.

Handbook Section 31-075.21

Specific Purpose/Factual Basis:

This handbook section is being adopted to provide the relevant parts of MPP section 23-353 for clarity, consistency and ease of use.

Section 31-075.22

Specific Purpose:

This section is being adopted to establish that the case record of a child eligible to receive Kin-GAP payments must be retained for a minimum of three years after the child's Kin-GAP case is closed; and to establish that Kin-GAP eligibility case file records are part of the case record.

Factual Basis:

This section is necessary to comply with Section 31-075.2 of the Child Welfare Services MPP, section 23-353 of the Operations MPP, W&I Code section 10851 and 45 Code of Federal Regulations (CFR) 74.2. This requirement is also consistent with information in ACL 11-15 regarding the retention of program-required forms for Kin-GAP (please see page 10).

In addition, this section is necessary for clarity and consistency. A child who receives Kin-GAP must have his or her dependency or wardship terminated concurrently with, or subsequently to, the establishment of a kinship guardianship pursuant to W&I Code sections 11363(a)(4) and 11386(e). At that point, the child is no longer a dependent or ward of the juvenile court but continues to receive Kin-GAP. Thus, it is necessary to make it clear that the case record of such a child must be retained for three years *after* the child's Kin-GAP case is closed, and not three years after the child is no longer a dependent or ward of the court. It is also necessary to make it clear that the case record includes the child's eligibility case file records, which document the child's continued eligibility to receive Kin-GAP.

Handbook Section 31-075.23 is renumbered from Section 31-075.21

Specific Purpose/Factual Basis:

This section is being renumbered from Section 31-075.21 to Section 31-075.23 to accommodate the addition of new Sections 31-075.21 and 31-075.22.

Section 31-075(h)(3)

Specific Purpose:

This section is being adopted to establish the requirement that, for a child for whom the permanency plan is a kinship guardianship, the assessment documentation specified in proposed Sections 31-205.1(h) through (h)(4)(A) must be part of the child's case record.

Factual Basis:

This section is necessary to comply with both statute and regulations. The assessment itself is performed pursuant to W&I Code sections 366.21(i) or 361.5(g). In addition, ACL 11-15 discusses assessment requirements on page five. Finally, existing Section 31-075(h) requires that all assessments be part of the case record.

Please also see the justification under Section 31-205(h).

Section 31-075(v)

Specific Purpose:

This section is being adopted to require that, when applicable, documentation regarding the appointment of a kinship guardianship for a child and the court order terminating dependency or wardship be part of the child's record.

Factual Basis:

This section is necessary to document the outcome for a child for whom the permanency plan is a kinship guardianship; that is, the child is no longer a dependent or ward of the juvenile court and is eligible to receive Kin-GAP payments, assuming all other requirements have been met. The W&I Code sections 11363(a)(3) and (4) specify that appointment of a kinship guardianship and termination of dependency or wardship are requirements for receipt of state-funded Kin-GAP, while W&I Code sections 11386(d) and (e) specify the same for receipt of federally funded Kin-GAP.

Handbook Sections 31-201.121(c)(3)(B)1. and 2.

Specific Purpose:

These handbook sections are being amended to delete outdated information and to provide updated statutory references and a website link to CDSS.

Factual Basis:

These updates are necessary for clarity, consistency and ease of use.

Sections 31-205.1(h) through (h)(4)(A)

Specific Purpose:

These sections are being adopted to provide the assessment documentation requirements that must be met if family reunification services are not recommended and the permanency plan for the child is a kinship guardianship.

Factual Basis:

These sections are necessary to comply, primarily, with W&I Code sections 366.21(i) and 361.5(g). In addition, ACL 11-15 contains instructions to counties regarding these assessment requirements on page five.

More specifically, the following applies to these sections:

Section 31-205.1(h)(1), regarding the requirement to document that being returned home or adopted are not appropriate permanency options for the child, is necessary to comply with W&I Code sections 366.21(c) and (f), 366.21(i)(1)(G) and (H), 366.22(c)(1)(F) and (G), 366.25(b)(1)(F) and (G), 361.5(g)(1)(F) and (G) and 727.3.

Section 31-205.1(h)(2), regarding the requirement to document that the child demonstrates a strong attachment to the prospective kinship guardian, is necessary to comply with W&I Code section 366.21(i)(1)(E) and 361.5(g)(1)(E).

Section 31-205.1(h)(3), regarding the requirement to document that the kinship guardian has a strong commitment to caring permanently for the child, is also necessary to comply with W&I Code sections 366.21(i)(1)(E) and 361.5(g)(1)(E).

Section 31-205.1(h)(4), regarding the requirement to document that a child over 12 years of age has been consulted about the proposed kinship guardianship arrangements, is necessary to comply with W&I Code sections 366.21(i)(1)(E) and 361.5(g)(1)(E).

Section 31-205.1(h)(4)(A), regarding the requirement to describe the condition of a child who cannot provide a meaningful response to being consulted about the proposed kinship guardianship arrangements, is also necessary to comply with W&I Code sections 366.21(i)(1)(E) and 361.5(g)(1)(E).

Sections 31-205.1(i) through (k) are renumbered from Sections 31-205.1(h) through (j)

Specific Purpose/Factual Basis:

These sections are being renumbered from Sections 31-205.1(h) through (j) to Sections 31-205.1(i) through (k) to accommodate the addition of the preceding new Section 31-205.1(h). This numbering was done in the original regulations text as noticed; however, the justification was not made in the Initial Statement of Reasons. Therefore, this statement is now added to justify the numbering change. There are no modifications to the regulations text as noticed.

Handbook Section 31-206.316 Renumbered from Section 31-206.317

Final Modification:

Specific Purpose/Factual Basis:

The outline numbering for the handbook, Section 31-206.317, is deleted and the handbook reference is now Handbook Section 31-206.316 because it falls immediately after Section 31-206.316. This amendment makes the handbook not part of the outline numbering to ensure it is recognized as handbook and not regulation. No textual changes to the handbook are made.

New Sections 31-206.317(a) through (f)

Specific Purpose:

These sections are being adopted to provide, for a child for whom the permanency plan is a kinship guardianship, the documentation requirements for the child's case plan.

Factual Basis:

These sections are necessary to comply with federal requirements pertaining to the case plan for a child for whom the permanency plan is guardianship with a relative and receipt of Kin-GAP is anticipated. All of the case plan requirements in these sections are contained in 42 United States Code (U.S.C.) §§ 675(1)(F)(i) through (vi), under the federal definition of "case plan" (part of Public Law 110-351, the Fostering Connections to Success and Increasing Adoptions Act of 2008). In order to establish eligibility for federal participation in a Kin-GAP payment, federal law requires that the information in these sections be documented in the child's case plan prior to the kinship guardianship

being ordered (once the kinship guardianship is ordered and the dependency is dismissed, a case plan is no longer required).

These sections are also necessary for consistency with related state requirements, as outlined in ACL 11-67, Case Plan and Kinship Guardianship Assistance Payment (Kin-GAP) Program, issued October 6, 2011. ACL 11-67 clarifies how California satisfies the federal case plan requirements for a child for whom the permanency plan is a kinship guardianship.

California law considers the case plan to be the foundation and central unifying tool in child welfare services. Under California law, the requirements in these sections are found in the case plan as defined in multiple W&I Code sections including, but not limited to, Sections 706.6, 16002(a) and (b), 16010, 16501.1(f)(12)(A) and 16501.1(f)(15) and other documents (e.g., court reports, social studies, assessments and case plan updates). California's case-planning process is collaborative and involves all parties including the parents, the child and the child welfare or probation agency. This process includes consideration of documents containing historical information and assessments that parallel the federal requirements described in 42 U.S.C. § 675(1)(F)(i) through (vi).

More specifically, please see the following, which in part describes the documents in the child's case record that typically contain the federally required information (and that are included in the child's case plan or case plan update):

Section 31-206.317(a), regarding the steps that the agency has taken to determine that it is not appropriate for the child to be returned home or adopted, is necessary to comply with 42 U.S.C. § 675(1)(F)(i). This section is also consistent with information required in the preliminary assessment, pursuant to W&I Code sections 366.21(c) and (f), 366.21(i)(1)(G), (H), 366.22(c)(1)(F) and (G), 366.25(b)(1)(F) and (G), 361.5(g)(1)(F) and (G) and 727.3, and included in the case plan update.

Section 31-206.317(b), regarding the reason(s) for any separation of siblings during placement, is necessary to comply with 42 U.S.C. § 675(1)(F)(ii). This section is also consistent with information required in the assessment, pursuant to W&I Code section 306.5, and reports pursuant to W&I Code sections 358.1(d), 366.1(f) and 706.6(i), and included in the case plan update. This section is also consistent with existing Section 31-206.311.

Section 31-206.317(c), regarding the reason(s) why a permanent placement with a relative through a kinship guardianship assistance arrangement is in the child's best interests, is necessary to comply with 42 U.S.C. § 675(1)(F)(iii). This section is also consistent with information required in the assessment, pursuant to W&I Code sections 366.21(c) and (f), 366.22(c)(2), 366.25(b)(2), 361.5(g)(1)(D) and (E), 706.5(c)(4) and 706.6(m), and included in the case plan update.

Section 31-206.317(d), regarding the ways in which the child meets the eligibility requirements for Kin-GAP, is necessary to comply with 42 U.S.C. § 675(1)(F)(iv). This section is also consistent with information required in the case plan pursuant to W&I Code sections 706.6 and 16501.1(f)(15). Proposed MPP section 45-600 et seq. contains the funding and eligibility requirements for Kin-GAP.

Section 31-206.317(e), regarding the efforts the agency has made to discuss adoption with the child's relative caregiver, is necessary to comply with 42 U.S.C. § 675(1)(F)(v). This section is also consistent with information required in the preliminary assessment, pursuant to W&I Code sections 366.21(i)(2)(B), 366.22(c)(2)(B), 366.25(b)(2)(B), 361.5(g)(2)(B) and 727.3(a)(3), and included in the case plan update.

Section 31-206.317(f), regarding the efforts the agency has made to discuss the kinship guardianship assistance arrangement with the child's parent(s), is necessary to comply with 42 U.S.C. § 675(1)(F)(vi). This section is also consistent with information required in the case plan pursuant to W&I Code sections 16501.1(f)(12)(A) and 706.6(o).

Final Modification:

Due to removing the above Handbook from the outline, the numbering sequence for this section is being modified to Section 31-206.317 from the noticed Section 31-206.318. There are no modifications to the regulations text as noticed.

Section 31-225.17

Specific Purpose:

This section is being adopted to require, for a child for whom the permanency plan is a kinship guardianship, that all of the information required in proposed Sections 31-206.317(a) through (f) is included in the child's case plan update documentation.

Factual Basis:

This section is necessary to comply with the federal requirements in 42 U.S.C. § 675(1)(F) and for consistency with related state requirements, as identified in the justification under Sections 31-206.317(a) through (f).

This section is also necessary because the point at which the permanency plan for a child becomes a kinship guardianship can vary from case to case. In cases where it is clear from the outset that the permanency plan for a child will be a kinship guardianship, the information required in Sections 31-206.317(a) through (f) will generally be included in the initial case plan documentation. In cases where the permanency plan for such a child evolves over time, the information required in Sections 31-206.317(a) through (f) will generally be included later in the case plan update documentation.

Section 31-425.4

Specific Purpose:

This section is being adopted to require that certain information, to be specified in the ensuing sections, be provided to a relative caregiver when it is anticipated that the permanent placement for a child will be a kinship guardianship.

Factual Basis:

This section is necessary for clarity and consistency and to serve as an introduction to the ensuing sections.

Section 31-425.41

Specific Purpose:

This section is being adopted to require that written information comparing and contrasting Kin-GAP benefits, Adoption Assistance Program (AAP) benefits and AFDC-FC benefits be provided to a relative caregiver when it is anticipated that the permanent placement for a child will be a kinship guardianship.

Factual Basis:

This section is necessary to comply with W&I Code sections 11364(e) and 11387(e).

Handbook Section 31-425.412

Specific Purpose:

This handbook section is being added to provide information on available resources regarding Kin-GAP benefits, AAP benefits and AFDC benefits.

Factual Basis:

This handbook section is necessary for clarity and to help counties meet the requirement in proposed Section 31-425.41.

Section 31-425.42

Specific Purpose:

This section is being adopted to require that, prior to the establishment of a kinship guardianship and the termination of the child's dependency or wardship, both a copy of and an explanation of the SOC 369 form and the SOC 369A form be provided to the relative caregiver.

Factual Basis:

This section is necessary to comply with W&I Code sections 11364(e) and 11387(e), which require the appropriate entity (i.e., county child welfare agency, probation department, or tribe(s) or tribal organization) to provide written information comparing and contrasting Kin-GAP benefits, AAP benefits and AFDC-FC benefits to a relative caregiver when it is anticipated that the permanent placement for a child will be a kinship guardianship. Both the SOC 369 form and the SOC 369A form contain related information.

This section is also necessary for consistency with W&I Code sections 11364(a) and 11387(a), which require the appropriate entity to enter into a written, binding kinship guardianship agreement with the relative guardian of an eligible child and to provide a copy of the agreement to the relative guardian. The SOC 369 form and the SOC 369A form together constitute this written agreement.

Please also see the justifications for Sections 31-425.41, 31-425.412, 31-03.1.1(s)(1) and 31-03.1.1(s)(2).

Final Modification:

Following the public hearing, and at its discretion, CDSS notes that this section is further necessary to comply with W&I Code sections 361.5(g)(2)(B), 366.21(i)(2)(B), 366.22(c)(2)(B) and 366.25(b)(2)(B). These sections require that the relative caregiver be provided with information regarding the permanency options of guardianship and adoption prior to establishing legal guardianship or pursuing adoption. In the case of a child eligible for Kin-GAP, these sections also require that the relative caregiver be informed about the terms and conditions of the negotiated Kin-GAP agreement. (The SOC 369 and SOC 369A forms together constitute the negotiated Kin-GAP agreement). In addition, W&I Code sections 361.5(g)(2), 366.21(i)(2), 366.22(c)(2) and 366.25(b)(2) have been added to the Reference line at the bottom of Section 31-425.

Section 31-425.43

Specific Purpose:

This section is being adopted to require that information on the availability of mental health services through Medi-Cal or other programs be provided to a relative caregiver when it is anticipated that the permanent placement for a child will be a kinship guardianship.

Factual Basis:

This adoption is necessary to comply with W&I Code sections 11364(e) and 11387(e).

Section 31-425.44

Specific Purpose:

This section is being adopted to require that information on access to medically necessary specialty mental health services are provided to a relative caregiver when it is anticipated that the permanent placement for a child will be a kinship guardianship.

Factual Basis:

This section is necessary to comply with W&I Code section 11376.

Handbook Section 31-425.441

Specific Purpose/Factual Basis:

This handbook section is being added to provide the text of W&I Code section 11376 for clarity, consistency and ease of use.

Section 31-503.1

Specific Purpose/Factual Basis:

This section is being amended to correct a cross-reference and to make a minor editorial change for clarity and consistency.

Section 31-503.11

Specific Purpose/Factual Basis:

This section is being amended to make minor editorial changes for clarity and consistency.

Section 31-503.112(c)

Specific Purpose/Factual Basis:

This section is being amended to make a minor editorial change for clarity and consistency.

Section 31-503.113 and 31-503.113(a) and (b)

Specific Purpose:

These sections are being adopted to require the social worker, when the child's case plan goal is legal guardianship with a relative and receipt of Kin-GAP is anticipated, to consider whether payment of child support by the parent will pose a barrier to a successful outcome of the child's permanent plan in that payment of support may compromise either the child's situation or the situation of other children in the parent's household.

Factual Basis:

These sections are necessary to comply with Family Code (FC) section 17552(a). The provisions in FC section 17552 relating to Kin-GAP were added by AB 1712.

More specifically:

In addition to being necessary to comply with FC section 17552(a), Section 31-503.113 is necessary for consistency with existing Sections 31-503.111 and 31-503.112, which require the social worker to perform similar analyses under different circumstances relative to the child's case plan.

Section 31-503.113(a) is necessary to comply with specific language in FC section 17752(a). This section is also necessary to protect the best interests of the child by ensuring that the social worker considers whether the stability of the child's current placement with the proposed relative guardian would be jeopardized by the parent's payment of support.

Section 31-503.113(b) is necessary to comply with FC section 17752(a). It is also necessary for consistency with existing Sections 31-503.111(c) and 31-503.112(c).

Final Modification:

At CDSS's discretion, and in response to public testimony, proposed Section 31-503.113(b) is being amended to provide that the parent's ability to meet the needs of other children in the household who may be at risk of removal needs to be considered in reaching a determination regarding child support *to the extent that this information is known*. In the case of a child who is eligible for Kin-GAP, prior to termination of dependency or wardship (a requirement of receiving Kin-GAP), the social worker should be familiar enough with the child's family to be able to assess the parent's ability to meet the needs of other children in the household who may be at risk of removal. However, once the Kin-GAP child has exited the child welfare system and is no longer receiving monthly social-worker visits, it may be more difficult for the social worker or other appropriate county worker to make

such an assessment during the subsequent reviews required under proposed Section 31-503.22.

Section 31-503.21

Specific Purpose:

This section is amended to clarify that this section only applies to existing Sections 31-503.111 and 31-503.112 and to make a minor editorial change.

Factual Basis:

This amendment is necessary for clarity and consistency, especially in light of the addition of proposed Section 31-503.113, which pertains to Kin-GAP cases and not to the circumstances described in existing Sections 31-503.111 or 31-503.112.

Please also see the justification under proposed Section 31-503.22.

Section 31-503.22

Specific Purpose:

This section is being adopted to establish, in the case of a child who is in the care of a kinship guardian and in receipt of Kin-GAP, the time frame within which a county is to review the decision of whether or not it is in the child's best interest to refer the case to the local child support agency.

Factual Basis:

This section is necessary to comply with FC section 17552(c), which requires a county to review its decision regarding child support at the time of reassessment (or redetermination) of the child's eligibility for Kin-GAP pursuant to W&I Code sections 11364(b)(1) and 11387(b)(1). Such a reassessment is necessary so that the county can determine, in consultation with the child's kinship guardian, if a revised decision regarding child support is necessary as the circumstances of the kinship guardian and the needs of the child change over time.

Final Modification:

Following the public hearing, and at its discretion, CDSS is amending this section to add the term "Kin-GAP" to modify "negotiated agreement." This editorial change is necessary for clarity. Another very minor editorial change—the addition of a space between two words—is being made for clarity and consistency.

Section 31-503.221

Specific Purpose:

This section is being adopted to establish that, if the child's Kin-GAP benefits are terminated, the child's case is to be referred to the local child support agency if that is determined to be in the child's best interest.

Factual Basis:

This section is necessary for consistency with FC section 17552(a), which pertains to the requirement to make an initial determination of whether it is in the best interest of the child to have the case referred to the local child support agency, and with FC section 17552(c), which pertains to the requirement to redetermine later whether it is still contrary to the child's best interest to have the case referred to the local child support agency.

This section is also necessary to protect the best interests of the child. It does so by ensuring that termination of the child's Kin-GAP benefits, which would represent a significant change in the child's circumstances, would trigger a redetermination of whether the child's case should be referred to the local child support agency. Thus, even though the child would no longer be eligible to receive Kin-GAP, the child may be entitled to receive child support as an alternative funding source.

Final Modification:

Following the public hearing, and at its discretion, CDSS is making several editorial changes to proposed Section 31-503.221 for clarity and consistency. These editorial changes clarify that the appropriate county worker shall refer the child's case to the local child support agency under this section only if *both*—and not either/or—of the following conditions are met: the child's Kin-GAP benefits have been terminated and it has also been determined that it is no longer contrary to the child's best interest to refer the child's case to the local child support agency.

Section 31-503.222

Final Modification:

Specific Purpose:

At CDSS's discretion, and in response to public testimony, this section is being added to establish that, if at any time the social worker or other appropriate county worker determines that it is no longer contrary to the child's best interest, the appropriate county worker is to refer the child's case to the local child support agency.

Factual Basis:

This section is necessary to clarify that, while this issue must be reviewed periodically pursuant to proposed Section 31-503.22 and Family Code section 17552(c), it can also be reviewed at other times as well. If it is determined during a review held at any time that it is no longer contrary to the child's best interest, the child's case is to be referred to the local child support agency. In other words, this section clarifies that there is some flexibility in terms of when this determination can be made, which benefits both the child and the county.

Section 45-600

Specific Purpose:

This section is being adopted to explain the purpose of the state and federal Kin-GAP Program as being a permanency option for foster children when reunification with the child's parents and adoption are not possible.

Factual Basis:

The W&I Code sections 11360 to 11379 create and establish the eligibility for the state Kin-GAP Program and Sections 11385 to 11393 create and establish the eligibility for the federal Kin-GAP Program to continue aid on behalf of a former foster child who is permanently residing with a kinship (relative) guardian pursuant to Sections 360, 366.26 or 728 of the W&I Code.

Section 45-601.1

Specific Purpose:

This section is being adopted to ensure consistency and the uniform application of terms in the provision and administration of child welfare services in California, including the administration of the state and federal Kin-GAP Programs. The definitions are the same as those found in Sections 11-400, 31-002 and 45-101, unless otherwise specified in proposed Section 45-601.1.

Factual Basis:

Definitions established in W&I Code sections 11360 to 11379 for the state Kin-GAP Program and Sections 11385 to 11393 for the federal Kin-GAP Program are necessary to provide clarity and uniformity in the administration of the state and federal Kin-GAP Programs.

Section 45-601.1(a)(1)

Specific Purpose:

This definition is being adopted to be consistent with placement requirements in Section 31-445 and W&I Code section 361.4. This definition clarifies that the kinship guardian's home has a current relative approval prior to the child being transferred from a child welfare services case to a Kin-GAP case.

Factual Basis:

The W&I Code sections 11363(a)(2) for the state Kin-GAP Program and 11386(a)(2) for the federal Kin-GAP Program require that prior to the establishment of the kinship guardianship the child resided in his/her relative's approved home for at least six consecutive months under the jurisdiction of the juvenile court or a voluntary placement agreement. This definition is necessary for consistency and uniformity in the statewide administration of the Kin-GAP Program.

Section 45-601.1(a)(2)

Specific Purpose:

This definition is being adopted to clarify which judicial proceedings will satisfy eligibility requirements for Kin-GAP. A relative whose guardianship was established in the probate court does not satisfy Kin-GAP eligibility requirements.

Factual Basis:

The W&I Code sections 11363(a)(3) and (4) for the state program and 11386(d) and (e) for the federal program identify the judicial proceedings that satisfy the eligibility requirements for continued aid under the Kin-GAP Program. This regulation is necessary for consistency and uniformity in the statewide administration of the Kin-GAP Program.

Section 45-601(c)(1)

Specific Purpose:

This definition cross-references MPP section 31-200 for purposes of adding case plan requirements that may impact a child's eligibility prior to a child transitioning from a child welfare services case to a federal Kin-GAP case.

Factual Basis:

The U.S.C. 42 § 675(1)(F) requires the case plan to include certain provisions when transitioning a child from the federal AFDC-FC Program to Kin-GAP. This definition is

necessary for consistency and uniformity in the statewide administration of the Kin-GAP Program.

Section 45-601.1(c)(2)

Specific Purpose:

This definition is being adopted to establish that the county where the legal guardianship was established has payment responsibility for the life of the Kin-GAP case even if the child changes his/her county of residence.

Factual Basis:

The W&I Code sections 11374(a) and 11390(d) state that the county that formally had court-ordered jurisdiction under Sections 300, 601 or 602 over an eligible child shall be responsible for making the Kin-GAP payment regardless of where the child actually resides. This definition is necessary for consistency and uniformity in the statewide administration of the Kin-GAP Program.

Section 45-601.1(f)

Specific Purpose:

This definition is being adopted to establish which Kin-GAP Program is used when federal financial participation is provided.

Factual Basis:

The W&I Code section 11386 defines the eligibility requirements for the federal Kin-GAP Program. This definition is necessary for consistency and uniformity in the statewide administration of the Kin-GAP Program.

Section 45-601.1(k)(1)

Specific Purpose:

This definition cross-references MPP section 31-002(k)(3) for purposes of adopting definitions that are consistent with child welfare services regulations.

Factual Basis:

The W&I Code sections 11362(b) for the state Kin-GAP Program and 11391(b) for the federal Kin-GAP Program define a kinship guardian. This definition is necessary for consistency and uniformity in the statewide administration of the Kin-GAP Program.

Section 45-601.1(k)(2)

Specific Purpose:

This definition cross-references MPP section 31-002(k)(4) for purposes of adopting definitions that are consistent with child welfare services regulations.

Factual Basis:

The W&I Code sections 11362(a) for the state Kin-GAP Program and 11391(a) for the federal Kin-GAP Program define the aid paid on behalf of a former foster child living with his/her kinship guardian. This definition is necessary for consistency and uniformity in the statewide administration of the Kin-GAP Program.

Final Modification:

Following the public hearing, and at its discretion, CDSS is amending the term "Kinship Guardianship Assistance Payments (Kin-GAP)" to "Kinship Guardianship Assistance Payment (Kin-GAP)." That is, the "s" is being deleted after "Payments."

This change is necessary for clarity and for consistency with preferred usage of the term in the State of California. The CDSS uses the singular version of this term in all of its departmental communications about the Kin-GAP Program. In addition, CDSS has consistently characterized the term "Kinship Guardianship Assistance Payment" as including additional related payments, such as any applicable Special Care Increment rate or clothing allowance for the child. Please refer to page 13 of ACL 11-15.

Section 45-601.1(n)

Specific Purpose:

This definition cross-references MPP section 31-002(n)(3) for purposes of adopting definitions that are consistent with child welfare services regulations.

Factual Basis:

The W&I Code sections 360, 366.26 or 728(d) define a person 18 years of age or older for purposes of the Kin-GAP Program.

Section 45-601.1(r)(1)

Specific Purpose:

This definition is being adopted to clarify that the child or nonminor former dependent are the recipients of the Kin-GAP payment.

Factual Basis:

The W&I Code sections 11363 or 11386 define recipients for purposes of Kin-GAP eligibility.

Section 45-601.1(r)(2)

This definition is being adopted to clarify the requirements of a relative for purposes of the federal Kin-GAP Program.

Specific Purpose and Factual Basis:

The W&I Code section 11391(c) defines the federal Kin-GAP relative requirements. Please also see the justification under Section 31-002(r)(5).

Section 45-601.1(r)(3)

Specific Purpose:

This definition cross-references MPP section 31-002(r)(5) for purposes of adopting definitions that are consistent with child welfare services regulations.

Factual Basis:

The W&I Code section 11362 define the state Kin-GAP relative requirements.

Section 45-601.1(s)(1)

Specific Purpose and Factual Basis

This definition is being adopted to clarify a child's relationship to a sibling for purposes of eligibility to the federal Kin-GAP Program. The W&I Code section 11391(d) implements the federal definition pursuant to federal Policy Interpretation 11-09.

Section 45-601.1(s)(2)

Specific Purpose

This definition is being adopted to establish which Kin-GAP Program is used when there is no federal financial participation provided.

Factual Basis:

The W&I Code section 11363 defines the eligibility requirements for the state Kin-GAP Program. This definition is necessary for consistency and uniformity in the statewide administration of the Kin-GAP Program.

Former Section 90-101(k)(1) is now Section 45-601.2(k)(1)

Specific Purpose:

This form is a mutual agreement between the placing agency and the nonminor former dependent when the child receiving Kin-GAP plans to emancipate upon completing his/her high school or vocational program. This form is necessary for establishing the child's Kin-GAP eligibility for continued receipt of aid.

Factual Basis:

The W&I Code section 11403.01 allows a Kin-GAP payment to be made on behalf of a nonminor former dependent after the age of 18 if the nonminor former dependent is in the process of attaining a high school diploma or a high school equivalency or avocational training certificate, prior to reaching the age of 19, if the nonminor former dependent resides with his/her kinship guardian and has signed the Mutual Agreement (KG 1) with the placement agency. This form is necessary for consistency and uniformity in the statewide administration of the Kin-GAP Program.

Final Modification:

This form is incorporated by reference and is not printed in the CDSS MPP because it would be cumbersome and impractical; however, this form is readily available from the CDSS.

Former Section 90-101(k)(2) is now Section 45-601.2(k)(2)

Specific Purpose:

This form is being adopted to standardize the process for documenting a child's initial and ongoing eligibility to the Kin-GAP Program.

Factual Basis:

The W&I Code sections 11364(b)(1) for the state Kin-GAP Program and 11387(b)(1) for the federal Kin-GAP Program require that the amount of aid shall be reviewed periodically but no less frequently than every two years. This form is necessary for consistency and uniformity in the statewide administration of the Kin-GAP Program.

Final Modification:

This form is incorporated by reference and is not printed in the CDSS MPP because it would be cumbersome and impractical; however, this form is readily available from the CDSS. Also, the numbering for this section has been changed to Section 45-603 for clarity and consistency.

Section 45-601.2(k)(3)

Specific Purpose:

This form is a mutual agreement between the placing agency and the nonminor former dependent when the child receiving Kin-GAP meets the requirements for extended Kin-GAP. This form is necessary for establishing the child's Kin-GAP eligibility for continued receipt of aid.

Factual Basis:

The W&I Code section 11403(b) allows a Kin-GAP payment to be made on behalf of a nonminor former dependent after the age of 18. This form is necessary for consistency and uniformity in the statewide administration of the Kin-GAP Program.

Final Modification:

This form is incorporated by reference and is not printed in the CDSS MPP because it would be cumbersome and impractical; however, this form is readily available from the CDSS. Also, the numbering for this section has been changed to Section 45-603 for clarity and consistency.

Section 45-601.2(s)(1)

Specific Purpose:

The SOC 369 (12/10) form is cross-referenced in MPP section 31-003(s)(1) for purposes of adopting forms that are consistent with child welfare services regulations.

Factual Basis:

The W&I Code sections 11363 and 11386 allow a Kin-GAP payment to be made if this form is completed. This form is necessary for consistency and uniformity in the statewide administration of the Kin-GAP Program.

Final Modification:

The numbering for this section has been changed to Section 45-603 for clarity and consistency.

Section 45-601.2(s)(2)

Specific Purpose:

The SOC 369A (11/11) form is cross-referenced in MPP section 31-003 for purposes of adopting forms that are consistent with child welfare services regulations.

Factual Basis:

The W&I Code sections 11363 and 11386 allow a Kin-GAP payment to be made if this form is completed. This form is necessary for consistency and uniformity in the statewide administration of the Kin-GAP Program.

Final Modification:

Following the public hearing, and at its own discretion, CDSS amended this section to update the revision date of the SOC 369A form. The SOC 369A (11/11) is now the SOC 369A (7/15). This amendment to the proposed regulations is necessary because Question No. 25 was added to page 3 of the SOC 369A, as follows: "In the event of my death or incapacitation I/we would like to become the successor guardian."

The addition of this question to the SOC 369A is necessary to comply with federal law, specifically Public Law 113-185, which was enacted September 29, 2014. Federal law now preserves a child's eligibility for Kin-GAP payments when, due to death or incapacity, a relative guardian is replaced by a successor legal guardian. In order to be eligible for continued federal Kin-GAP, a successor legal guardian must be named for the child in the Kin-GAP agreement or an amendment to the agreement. This requirement is met by the inclusion of Question No. 25 on the SOC 369A. Also, the numbering for this section has been changed to Section 45-603 for clarity and consistency.

Sections 45-602, .1 through .211

Specific Purpose:

The regulations that apply to both the state and federal Kin-GAP Programs are contained in these sections. Additionally, these regulations are being adopted to establish that the child transferring from a child welfare services case to a Kin-GAP case had been placed in an approved home of a relative pursuant to Section 31-445.

Factual Basis:

The W&I Code sections 11363(a)(2) for the nonfederal Kin-GAP Program and 11386(a)(2) for the federal Kin-GAP Program require that the child be residing in the approved home of the prospective relative guardian. These regulations are necessary for consistency and uniformity in statewide administration of the Kin-GAP Program.

Final Modification:

In response to public testimony CDSS has amended Section 45-602.11 to include ", via court order or voluntary placement," and "or wardship." Additionally, the commas after "relative" and "guardian" were deleted to make a grammatical correction.

In response to public testimony CDSS has amended Section 45-602.21 to include, "In the case of a licensed home of a relative foster parent or resource family, as defined in Section 45-601(r)(2), the home must have been approved by the appropriate county or agency prior to a child's transfer to the Kin-GAP Program as evidenced by the pertinent licensing documentation."

Section 45-602.3 through .313

Specific Purpose:

This regulation provides that Kin-GAP is available to a minor that is less than 18 years of age or less than 19 years of age if completing education or a vocational program. Effective January 1, 2012, the Kin-GAP age requirement was extended on an annual basis until January 2014 to less than the age of 21 if the guardianship was established on or after the child's 16th birthday.

Factual Basis:

State statute has implemented federal legislation (Public Law 110-351), which allows for the continuation of aid after a child's 18th birthday provided certain requirements are met pursuant to W&I Code sections 11363(d) and 11386(h) for the nonfederal and federal Kin-GAP Programs, respectively. These regulations are necessary for consistency and uniformity in the statewide administration of the Kin-GAP Program.

Final Modification:

The terms "Section" and "below" have been deleted from Section 45-602.312 to make a grammatical correction to the regulation.

Section 45-602.4 through .42

Specific Purpose and Factual Basis:

These regulations are being adopted to establish that a foster child is eligible for Kin-GAP if the child was removed from his/her home pursuant to a voluntary placement agreement or an involuntary juvenile court proceeding pursuant to W&I Code sections 300, 601 or 602, and pursuant to W&I Code sections 11363(a) and 11386(a)(1). These regulations are necessary for consistency and uniformity in the statewide administration of the Kin-GAP Program.

Section 45-602.5 through .52

Specific Purpose and Factual Basis:

These regulations are being adopted to establish that the exceptions to property requirements in the nonfederal and federal AFDC-FC Program also apply to the state and federal Kin-GAP Programs. These regulations are necessary for consistency and uniformity in the statewide administration of the Kin-GAP Program.

Handbook Section 45-602.52

Final Modification:

Specific Purpose and Factual Basis:

In response to public testimony, CDSS has added "HANDBOOK BEGINS HERE See Sections 31-002(i)(1), 31-002(i)(1)(A) and 31-525 for the definition and description of the Independent Living Program (ILP). The above-referenced Section 42-201 refers to the 1996 AFDC regulations. HANDBOOK ENDS HERE" to provide clarity to these sections

Section 45-602.6

Specific Purpose and Factual Basis:

This regulation is being adopted to clarify that the citizenship and alienage requirement in the California Work Opportunity and Responsibility to Kids (CalWORKs) and AFDC-FC Programs also apply to the state and federal Kin-GAP Programs. This regulation is

necessary for consistency and uniformity in the statewide administration of the Kin-GAP Program.

Former Section 90-110(i) is now Section 45-602.7, .71

Specific Purpose and Factual Basis:

This regulation is adopted to ensure that record requirements for the child welfare services and public assistance programs apply to the state and federal Kin-GAP Programs. This regulation is necessary for consistency and uniformity in the statewide administration of the Kin-GAP Program.

Section 45-602.8 through .84

Specific Purpose and Factual Basis:

Pursuant to W&I Code sections 11364(b)(1) and 11387(b), these regulations are being adopted to comply with statutory requirements that redeterminations be completed no less frequently than every two years. These regulations are necessary for consistency and uniformity in the statewide administration of the Kin-GAP Program.

Final Modification:

The phrase ", the following" has been deleted from the section and the word "to" has been added to Section 45-602.83 to make a grammatical correction to the regulation. Additionally, "(e)" was changed to "(d)" to make another grammatical correction to this regulation.

Handbook Section 45-602.84

Final Modification:

Specific Purpose and Factual Basis:

In response to public testimony, CDSS has added "HANDBOOK BEGINS HERE The above-referenced Sections 42-430 through 42-435 refer to the 1996 AFDC regulations. HANDBOOK ENDS HERE" to provide clarity to these sections.

Section 45-604, .1, and .11

Specific Purpose:

These regulations are adopted pursuant to W&I Code section 11386(a)(2), which limits eligibility to the federal Kin-GAP Program to those children having transferred to Kin-GAP from the federal AFDC-FC Program.

Factual Basis:

Federal statute, 45 U.S.C. § 671 (a)(29)(D), allowed states to exercise the option of making kinship guardianship payments under Title IV-E. California exercised that option to claim federal financial participation in Kin-GAP payments on behalf of federally eligible children. These regulations are necessary for consistency and uniformity in the statewide administration of the federal Kin-GAP Program.

Section 45-604.2 through .23

Specific Purpose and Factual Basis:

These regulations are being adopted to establish that a foster child is eligible for federal Kin-GAP if the child was removed from his/her home pursuant to a voluntary placement agreement or involuntary juvenile court pursuant to W&I Code sections 300, 601, 602 and 11386(a)(1). These regulations are necessary for consistency and uniformity in the statewide administration of the Kin-GAP Program.

Final Modification:

The language "adjudicated a dependent of the juvenile court pursuant to Welfare and Institutions Code section 300, to the effect that continuation in the home would be contrary to the welfare of the child" has been deleted from Section 45-604.22. Additionally, the language "removed from his or her home as a result of a judicial determination, including being adjudged a dependent of the juvenile court pursuant to Welfare and Institutions Code section 300, to the effect that continuation in the home would be contrary to the welfare of the child" has been added to Section 45-604.22. These minor grammatical changes were made to improve the readability of the regulation.

The language "adjudicated a ward of the juvenile court pursuant to Welfare and Institutions Code sections 601 or 602 to the effect that continuation in the home would be contrary to the welfare of the child" has been deleted from Section 45-604.23. Additionally, the language "removed from his or her home as a result of a judicial determination, including being adjudged a ward of the juvenile court pursuant to Welfare and Institutions Code sections 601 or 602, to the effect that continuation in the home would be contrary to the welfare of the child" has been added to Section 45-604.23. These minor grammatical changes were made to improve the readability of the regulation.

Section 45-604.3

Specific Purpose:

This regulation is being adopted to clarify that a mutual agreement between the relative and the placement agency must be signed prior to establishing the kinship guardianship.

The SOC 369 and SOC 369A are the standardized forms used to document this agreement.

Factual Basis:

Federal statute, 45 U.S.C. § 673(d)(1)(A)(i), and W&I Code section 11387(a) require that the relative enter into a written binding agreement with the child welfare services agency. This regulation is necessary for consistency and uniformity in the statewide administration of the federal Kin-GAP Program.

Section 45-604.4

Specific Purpose:

This regulation is being adopted to provide that a federal Kin-GAP payment may be made on behalf of a sibling of a federally eligible Kin-GAP child when the sibling is placed with the kinship guardian of the federally eligible Kin-GAP child.

Factual Basis:

The W&I Code section 11388 provides that federal financial participation may be claimed on behalf of the federally eligible Kin-GAP child's sibling, regardless of the sibling's federal eligibility. This regulation is necessary for consistency and uniformity in the statewide administration of the federal Kin-GAP Program.

Final Modification:

The word "Title" has been added to Section 45-604.42 to make a grammatical correction to the regulation.

In response to public testimony, Section 45-604.44 has been added to provide clarity for the sibling written agreement requirements.

Section 45-604.5

Specific Purpose and Factual Basis:

This section is being adopted to ensure that child welfare services information that supports Kin-GAP eligibility is maintained after the child welfare services case is closed.

Final Modification:

In section 45-604.5 (p) the number "8" has been stricken from "31-206.318" and replaced with the number "7" to "31-206.317" to make a grammatical correction to the regulation.

Sections 45-604.6 and .61

Final Modification:

In response to public testimony Sections 45-604.6 and .61 have been added to provide clarification to the Federal Kin-GAP successor guardian requirements.

In the Handbook the number "8" has been stricken from "31-206.318" and replaced with the number "7" to "31-206.317" to make a grammatical correction to the Handbook. Additionally, in the Handbook "ed" has been added to "return" to make a grammatical correction.

Specific Purpose:

In response to public testimony, this regulation is being adopted to establish the placement requirement for a successor guardian. This regulation is necessary for consistency and uniformity in the statewide administration of the federal Kin-GAP Program.

Factual Basis:

The W&I Code section 11386(i) for the federal Kin-GAP Program establishes when Kin-GAP payments should be made to a successor guardian.

Section 45-605.1

Specific Purpose and Factual Basis:

These regulations are adopted pursuant to W&I Code section 11361, which establishes eligibility for the state Kin-GAP Program for dependent children who were in long-term stable placements with relatives but were ineligible for the federal AFDC-FC Program.

Section 45-605.2 through .22

Specific Purpose and Factual Basis:

These regulations are being adopted to establish that a foster child is eligible for state Kin-GAP if the child was removed from his/her home pursuant to an involuntary court proceeding pursuant to W&I Code sections 300, 601, 602 and 11363(a). These regulations are necessary for consistency and uniformity in the statewide administration of the Kin-GAP Program.

Final Modification:

In section 45-605.2 "youth" has been stricken and "child or nonminor former dependent" has been added to make a grammatical correction to the regulation.

Section 45-605.3

Specific Purpose:

This regulation is being adopted to clarify that a mutual agreement between the relative and the placement agency must be signed when establishing the kinship guardianship. The SOC 369 and SOC 369A are the standardized forms used to document this agreement.

Factual Basis:

The W&I Code section 11364(a) requires that the relative enter into a written binding agreement with the child welfare services agency. This regulation is necessary for consistency and uniformity in the statewide administration of the state Kin-GAP Program.

Section 45-605.4

Specific Purpose and Factual Basis:

This section is being adopted to ensure that child welfare services information that supports Kin-GAP eligibility is maintained after the child welfare services case is closed.

Final Modification:

In response to public testimony, minor grammatical corrections have been made and the phrase "letters of guardianship" has been added; in (h) of this section "A" has been deleted and added after "369" for clarification.

Additionally, in response to public testimony, the phrase "or a copy of the letters of guardianship" has been added along with deleting "(new Division 31 regulations)" and adding "and 31-206.318" to (l) of this section for clarification.

In Section 45-605.4(l) the number "8" has been stricken from "31-206.318" and replaced with the number "7" to "31-206.317" to make a grammatical correction to the regulation.

Additionally, in the Handbook, "ed" has been added to "return" to make a grammatical correction.

Section 45-605.5 and .51

Specific Purpose:

This regulation is being adopted to establish the placement requirement for a subsequent or co-guardian. This regulation is necessary for consistency and uniformity in the statewide administration of the nonfederal Kin-GAP Program.

Factual Basis

The W&I Code section 11363(e) for the state Kin-GAP Program establishes when Kin-GAP payments should be made to a subsequent or co-guardian.

Final Modification:

In response to public testimony, the Department has amended the regulations to address the conditions under which federal eligibility for Kin-GAP may continue when a successor guardian has been identified.

Sections 45-606, 45-606.1 through .125

Specific Purpose:

This section is being adopted to enable a Kin-GAP eligible child to receive Kin-GAP benefits beyond his/her 18th birthday if the relative became the kinship guardian on or after the child's 16th birthday, provided specific requirements are met.

Factual Basis:

The W&I Code sections 11363(d) for the state Kin-GAP Program and 11386(h) for the federal Kin-GAP Program provide for extended Kin-GAP benefits provided the nonminor former dependent meets specific criteria and has entered into an agreement with the child welfare services agency. These regulations are necessary for consistency and uniformity in the statewide administration of the Kin-GAP Program.

Final Modification:

In response to public testimony, Section 45-606.125 has been amended and the phrase "(a) through (d)" has been deleted and replaced with ".121 through .124." Additionally, the phrase "30 working days" has been added to Section 45-606.11 to provide clarity in response to public testimony.

Section 45-607, .1, .11 and .12

Specific Purpose:

These sections are being adopted to clarify that Kin-GAP payments are prospective and begin on the first of the month following the month eligibility was established.

Factual Basis:

W&I Code section 11374(b) for the state Kin-GAP Program and 11390(e) for the federal Kin-GAP Program establish when the initial Kin-GAP benefit payment may be made on behalf of an eligible child. These regulations are necessary for consistency and uniformity in the statewide administration of the Kin-GAP Programs.

Final Modification:

In Section 45-607.11 the semicolon after "month" was stricken to make a grammatical corrections to the regulation.

In Section 45-607.12 the semicolon after "month" was stricken to make a grammatical correction to the regulation.

Section 45-607.2 through .213

Specific Purpose:

These sections are being adopted to clarify circumstances under which the Kin-GAP payment should be suspended.

Factual Basis:

The W&I Code sections 11363 and 11386 establish requirements that need to be met in order for the Kin-GAP payment to be continued.

Final Modification:

In response to public testimony, Sections 45-607.214 and .215 have been added to provide clarification regarding suspension and resumption of the Kin-GAP payment.

In Section 45-607.21 "A" was added to make a grammatical correction.

Section 45-607.3 and .31

Specific Purpose:

This section is being adopted to establish that any adjustments to the Kin-GAP payment shall be computed based on known or estimated income in the current calendar month.

Factual Basis:

The W&I Code section 11364(b)(5) for the state Kin-GAP Program and 11387(b)(5) for the federal Kin-GAP Program require the kinship guardian to report any changes in the needs of the child or the circumstances of the relative guardian that can affect payment. This will reduce the possibility of an overpayment being made.

Final Modification:

In Section 45-607.31 "The" was added and "s" was stricken from "payments" to make a grammatical correction.

Section 45-607.4 through .43

Specific Purpose:

These sections are being adopted to establish criteria that end eligibility for the state and federal Kin-GAP Programs.

Factual Basis:

The W&I Code sections 11363(b) and (d) for the state program and 11386(h) and (I) for the federal program establish parameters based on age and authority for making payment. If either of these criteria is not met, that constitutes a basis for no longer receiving aid. These regulations are necessary for consistency and uniformity in the statewide administration of the Kin-GAP Programs.

Final Modification:

In response to public testimony Section 45-607.43 has been added to provide clarification.

Section 45-607.5, .51

Specific Purpose and Factual Basis:

These regulations are being adopted to clarify that a Kin-GAP case does not need to be discontinued if the child's parent moves into the home.

Section 45-607.6 through .63

Specific Purpose and Factual Basis

These regulations are being adopted to establish that the income requirements that apply to the CalWORKs and federal Dependent Children-Foster Care (AFDC-FC) Programs also apply to the nonfederal and federal Kin-GAP Programs. These regulations are necessary for consistency and uniformity in the statewide administration of the Kin-GAP Program.

Final Modification:

A minor grammatical correction has been made by adding "a former dependent or ward of the juvenile court who is" to improve the readability of Section 45-607.62. Following the 15-day renote, a minor grammatical change has been made to .63 for clarity.

Section 45-607.7 through .72

Specific Purpose and Factual Basis:

These regulations are being adopted to establish a Kin-GAP payment offset for income that does not meet the CalWORKs or federal AFDC-FC income requirements.

Final Modification:

For clarity and in response to public testimony, the Department has amended Section 45-607.72 and added Section 45-607.73 to the regulations addressing the offset for Social Security disability income (i.e., disability, survivor benefits, etc.) based on the criteria in the 1996 AFDC regs. Section 44-100.

Section 45-607.8 through .85

Specific Purpose and Factual Basis:

These regulations are being adopted, pursuant to W&I Code sections 11363(e) for the state program and 11386(f) for the federal program, to establish Kin-GAP payment guidelines when a 388 petition is filed.

Handbook Section 45-607.85

Final Modification:

Special Purpose and Factual Basis:

In response to public testimony, CDSS has added "HANDBOOK BEGINS HERE The above-referenced Sections 44-100 through 44-133 and 44-207 refer to the 1996 AFDC regulations. HANDBOOK ENDS HERE" to provide clarification to these sections.

b) Identification of Documents Upon Which Department Is Relying

Federal Legislation

- Public Law 110-351, Fostering Connections to Success and Increasing Adoptions Act of 2008

State Legislation

- SB 1901, Chapter 1055, Statutes of 1998
 - Initially established the state Kin-GAP program, which became available to eligible children exiting the juvenile court dependency system on or after January 1, 2000 to live with a kinship guardian.
- AB 1808, Chapter 75, Statutes of 2006
 - Extended the provisions of the state Kin-GAP program to eligible probation youth exiting the delinquency system to live with a kinship guardian.
- AB 12, Chapter 559, Statutes of 2010
 - Implemented new federal legislation that allows for Kin-GAP benefits to be eligible for federal financial participation.

- Reduced the amount of time a child has to live with a relative caregiver in order to qualify for Kin-GAP, from 12 months to six months.
 - Allows California to extend foster care up to age 21 under certain conditions.
- AB 212, Chapter 459, Statutes of 2011
 - Authorized certain Kin-GAP recipients to continue to receive Kin-GAP aid after 18 years of age.
- AB 1712, Chapter 846, Statutes of 2011
 - Changed the definition of “relative” to include nonrelative extended family members (NREFM), subject to federal approval and for purposes of federal Kin-GAP only.
- SB 1013, Chapter 35, Statutes of 2012
 - Trailer bill

Statutes

- State Kin-GAP Program, W&I Code section 11362 et seq.
- Federal Kin-GAP Program, W&I Code section 11385 et seq.

All-County Letters

- ACL 11-15, New Kin-GAP Program Requirements, January 31, 2011
- ACL 11-67, Case Plan and Kin-GAP Program, October 6, 2011

Forms

- Form KG 1 (12/11), Kin-GAP Mutual Agreement for 18 Year Olds
- Form KG 2 (1/11), Statement of Facts Supporting Eligibility for Kin-GAP Program
- Form KG 3 (12/11), Kin-GAP Mutual Agreement for Nonminor Former Dependents
- SOC 369 (12/10), Agency-Relative Guardianship Disclosure
- SOC 369A (11/11), Kin-GAP Program Agreement Amendment

Other Documents

- Letter from the federal Department of Health and Human Services, dated May 19, 2014, approving CDSS' request to amend its definition of "relative" to include fictive kin for purposes of federal Kin-GAP

c) Local Mandate Statement

As they relate to programs that were realigned within 2011 Realignment Legislation, these regulations do not have the overall effect of increasing the costs already borne by the local agency. These regulations do not impose any mandate upon school districts. These regulations do impose a mandate upon local agencies as they relate to programs not included in 2011 Realignment Legislation and there are "state-mandated local costs" in these regulations which require state reimbursement under Section 17500 et. seq of the Government Code.

d) Statement of Alternatives Considered

An alternative has not been identified or proposed by the public that would be more effective in carrying out the purpose for which the regulations are being proposed. These regulations do not have an adverse impact on small business.

e) Statement of Significant Adverse Economic Impact on Business

The CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This determination was made based on the statutes that established the state and federal Kin-GAP Programs.

The Kin-GAP Program is not new. SB 1901, Chapter 1055, Statutes of 1998, initially established the state Kin-GAP Program, which has been operational since January 1, 2000. Subsequently, AB 12, Chapter 559, Statutes of 2010, implemented new federal legislation that permitted Kin-GAP to be eligible for federal financial participation, leading to the creation of the federal Kin-GAP Program in California. Among other things, subsequent legislation authorized certain Kin-GAP recipients to continue to receive Kin-GAP after 18 years of age.

The above legislation also established the eligibility criteria for children to receive state and federal Kin-GAP. An eligible child must be a dependent or ward of the California juvenile court, reside in the home of an approved relative caregiver for six consecutive months, have a kinship guardianship established and have his or her dependency dismissed.

Eligible children are the only beneficiaries of the state and federal Kin-GAP Programs. No new business has been created under these proposed regulations that would have an economic impact on any entity in California. As a result, CDSS has determined that the proposed regulations will not have a significant, statewide adverse economic impact directly affecting other businesses, including the ability of California businesses to compete with businesses in other states. If anything, the proposed regulations may benefit California businesses, since the Kin-GAP Program provides approved relative caregivers with the funds necessary to support the children in their care.

f) Economic Impact Assessment

The adoption of the proposed regulations will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

The Creation or Elimination of Jobs within the State of California

These proposed regulations are intended to conform to AB 12 (Chapter 559, Statutes of 2010) and subsequent legislation amending AB 12. The state Kin-GAP Program has operated since January 1, 2001, and AB 12 implemented the federal Kin-GAP Program in California. The proposed regulations address state and federal Kin-GAP eligibility requirements and amend ancillary regulatory requirements, such as assessment and case plan requirements for a child for whom the permanency plan is a kinship guardianship. County child welfare workers currently determine whether children who are under the jurisdiction of the California juvenile court are eligible for various state and federal funding programs, including Kin-GAP. That would not change under the proposed regulations. Therefore, CDSS has determined that this regulatory proposal will not have an impact on the creation or elimination of jobs within the State of California.

The Creation of New Businesses or the Elimination of Existing Businesses within the State of California

These proposed regulations are intended to conform to AB 12 (Chapter 559, Statutes of 2010) and subsequent legislation amending AB 12. The state Kin-GAP Program has operated since January 1, 2001, and AB 12 implemented the federal Kin-GAP Program in California. The proposed regulations address state and federal Kin-GAP eligibility requirements and amend ancillary regulatory requirements, such as assessment and case plan requirements for a child for whom the permanency plan is a kinship guardianship. County child welfare workers currently determine whether children who are under the jurisdiction of the California juvenile court are eligible for various state and federal funding programs, including Kin-GAP. That would not change under the proposed regulations. Therefore, CDSS has determined that this regulatory proposal will not have an impact on the creation or elimination of existing businesses within the State of California.

The Expansion of Businesses Currently Doing Business within the State of California

These proposed regulations are intended to conform to AB 12 (Chapter 559, Statutes of 2010) and subsequent legislation amending AB 12. The state Kin-GAP Program has operated since January 1, 2001, and AB 12 implemented the federal Kin-GAP Program in California. The proposed regulations address state and federal Kin-GAP eligibility requirements and amend ancillary regulatory requirements, such as assessment and case plan requirements for a child for whom the permanency plan is a kinship guardianship. County child welfare workers currently determine whether children who are under the jurisdiction of the California juvenile court are eligible for various state and federal funding programs, including Kin-GAP. That would not change under the proposed regulations. Therefore, CDSS has determined that this regulatory proposal will not have an impact on the expansion of businesses currently doing business within the State of California.

Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety and the State's Environment

The benefits of the regulatory action to the health and welfare of California residents, worker safety and the state's environment are as follows: By clarifying existing laws that authorize more economic support for former foster children and youth placed with relative guardians, this regulatory action may result in more stability, security and opportunities for these foster children and families. In turn, this may increase the permanence and stability of these guardianships and translate into economic and social benefits for society in general by reducing reentry into foster care due to failed guardianships. Foster children and youth who may otherwise have remained in foster care will instead be cared for in the homes of relatives on a permanent basis. Ultimately, by providing more support to vulnerable foster children and youth, this regulatory action may help California meet state and federal objectives of safety, permanency and well-being for children and youth.

g) Benefits Anticipated from Regulatory Action

The proposed regulations will help ensure that all California children who were under the jurisdiction of a California court, placed in out-of-home care and had a kinship guardianship established and dependency dismissed to receive the financial assistance to which they are entitled.

h) Statement of Specific Technology or Equipment

This regulatory action will not mandate the use of new, specific technologies or equipment.

i) Testimony and Response

These regulations were considered as Item # 1 at the public hearing held on December 3, 2014 in Sacramento, California. Written testimony was received from the

following during the 45-day comment period from October 22, 2014 to 5:00 p.m. December 3, 2014:

Comments from the Fresno County Department of Social Services (DSS)

1. Section 31-002(r)(5)(B)

Comment:

The DSS wishes to know if the statement "subject to federal approval of amendments to the state plan and" be removed since the federal approval has been obtained.

Response:

The CDSS agrees and is making this change to the regulations for clarity. CDSS is deleting—with the use of an ellipsis—the phrase "subject to federal approval of amendments to the state plan" from proposed Section 31-002(r)(5)(B), which cites W&I Code sections 11391(c) and (c)(2) through (c)(4) in handbook. As noted under the justification for proposed Section 31-002(r)(5)(A), federal approval has been obtained. On May 19, 2014, the federal Department of Health and Human Services notified CDSS that, effective January 1, 2014, it had approved California's request to amend its definition of a relative to include fictive kin for federal Kin-GAP purposes pursuant to W&I Code section 11391(c).

2. Section 31-503.221:

Comment:

The DSS believes that this section should read, "If Kin-GAP benefits are terminated, **or** if the social worker..." because using "and" instead of "or" requires both termination and social worker (county worker) determination.

Response:

The CDSS appreciates this comment, but is not amending proposed Section 31-503.221 as suggested. The structure and intent of this section is consistent with existing Section 31-503.211. Moreover, the termination of a child's Kin-GAP benefits wouldn't necessarily mean that it would automatically be in the child's best interest to refer the child's case to the local child support agency. The county would *also* have to determine which course of action regarding child support would be in the child's best interest at that point.

However, at its own discretion, CDSS is amending proposed Section 31-503.221 to delete an unnecessary word "if," and to add the term "also" to clarify that both requirements in the section must be met before referring the child's case to the

local child support agency. Please also see the final modification under proposed Section 31-503.221.

In addition, also at its own discretion, CDSS is adding proposed Section 31-503.222 to provide that *if at any time* the social worker or other appropriate county worker determines that it is no longer contrary to the child's best interest, the appropriate county worker is to refer the child's case to the local child support agency. Please also see the final modification under proposed Section 31-503.221.

Finally, please see the response to Comment No. 9 below, which was submitted by the Riverside County Department of Public Social Services.

3. Section 45-602.4

Comment:

The DSS states that this section does not include Voluntary Placement Agreement (VPA), which is listed in the Initial Statement of Reasons, and, therefore, suggests that VPA be listed under new Subsection 45-602.43.

Response:

This section addresses the basis upon which the court establishes jurisdiction over the child and ultimately establishes the guardianship. Although the VPA is a mechanism to place the child into the placement and care responsibility of the child welfare agency, which may then place the child with an approved relative, the VPA does not provide the court the jurisdiction necessary to establish the guardianship.

4. Section 45-604.41

Comment:

The DSS wants to know if this section is referring to sibling children placed at the same time or only with the same guardian. In addition, the county wants to know if counties can change the first sibling case from state to federal and, if so, could it be retroactive or only as of the date the federal child enters Kin-GAP.

Response:

This section is referring to placement with the same guardian. A nonfederal sibling case can be eligible for federal Kin-GAP provided the federal written agreement requirement has been met. The beginning date of the federal payment

would be the date that the federally eligible Kin-GAP sibling is placed with the guardian. Regulations have been amended for clarity.

5. Section 45-605.2

Comment:

The DSS states that this section does not address VPA and believes that if VPA is an avenue to enter State Kin-GAP, it needs to be listed under new Subsection 45-605.23.

Response:

This section addresses the basis upon which the court establishes jurisdiction over the child and ultimately establishes the guardianship. Although the VPA is a mechanism to place the child into the placement and care responsibility of the child welfare agency, the VPA does not provide the court the jurisdiction necessary to establish the guardianship.

6. Section 45-605.4(k)

Comment:

The DSS states that this section only mentions a court order establishing kinship guardianship, which differs from what is mentioned in Section 45-604.5(n), which states that the child's case file shall contain a court order establishing kinship guardianship or a copy of the letters of guardianship.

Response:

The CDSS agrees and is making this change. The Department will add the "letters of guardianship" language to this section.

7. Section 45-605.5

Comment:

The DSS wants to know why there is no corresponding federal section and if subsequent guardians and co-guardians are only eligible for the state program.

Response:

Until recently, federal law did not permit the continuation of federal Kin-GAP payments when a subsequent guardian or co-guardian was appointed at a later date. However, pursuant to Public Law 113-183, federal eligibility may continue for a successor guardian under certain circumstances. CDSS has amended the

regulations to address the conditions under which federal eligibility for Kin-GAP may continue when a successor guardian has been identified.

8. Section 45-606.11

Comment:

This section states that the Kin-GAP Mutual Agreement for Nonminor Former Dependents must be signed within a month after the nonminor's 18th birthday. DSS wants to know if this statement can be changed to "prior to, or within a month...", as this would be consistent with previous Kin-GAP regulations.

Response:

The current language in this section is consistent with CDSS policy for extended Kin-GAP nonminor former dependents.

9. Section 45-606.125

Comment:

This section states "Is incapable of doing any of the activities described in (a) through (d),..." DSS believes that it should read "Is incapable of doing any of the activities described in .121 through .124..."

Response:

The CDSS agrees and is making this change to the section.

10. Section 45-607.11

Comment:

The DSS wants to know if this section also applies to fictive relatives who receive foster care as a certified home of a Foster Family Agency (FFA).

Response:

This section does apply to a fictive relative who was receiving foster care as a FFA certified home as well.

11. Section 45-607.4

Comment:

The DSS wants to know if the last month of payment be prorated based on the date of termination of the guardianship or the date the nonminor no longer meets the age requirements. In addition, DSS believes that if termination is intended to be the last day of the month in which guardianship terminates or the child no longer meets the age requirements, the regulation should be listed in .41 and .42.

Response:

The last month of payment is to be prorated based on the date of termination or the date the nonminor former dependent no longer meets the age requirements pursuant to Sections 45-607.41 and .42.

12. Section 45-607.71

Comment:

The DSS wants clarification if the offset of the earned income is based on criteria in Section 44-100 or in other determination.

Response:

The State Kin-GAP payment is offset against the SSI/SSP payment on a dollar-for-dollar basis. For clarity and in response to this question, CDSS has amended Section 45-607.72 and added Section 45-607.73 to the regulations addressing the offset for Social Security disability income (i.e., disability, survivor benefits, etc.) based on the criteria in Section 44-100 of the 1996 AFDC regulations.

13. Section 45-607.84

Comment:

The DSS mentioned that this section lists dependency jurisdiction is maintained by the juvenile court and wants to know if delinquency is intentionally omitted. In addition, the county wants to know if the *Brazwell* case in ACL 11-28 still applies or do the regulations supersede the ACL and, if so, would there be an ineligibility to Kin-GAP Mutual Agreement for Nonminor Former Dependents even if probation did not maintain placement and care.

Response:

W&I Code sections 11363(b) and 11386(f) specifically address petitions filed pursuant to W&I Code section 388. Therefore, only the continuation of

dependency jurisdiction is addressed in this regulation. The *Brazwell* decision, as described in ACL 11-28, still applies and Sections 45-607.214 and .215 have been added to provide clarification regarding suspension and resumption of the Kin-GAP payment.

Comments from the Riverside County Department of Public Social Services (DPSS)

1. Section 31-002(n)(3)

Comment:

The DPSS believes that there should be an "Or" between Subsections 31-002(n)(3)(A) and (n)(3)(B).

Response:

The CDSS agrees and is making this minor change to the regulations for clarity.

2. Section 31-002(r)(5)(A)

Comment:

The DPSS believes that the language "'Relative' means an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including step-parents stepparents, step-siblings stepsiblings, and all relatives whose status is preceded by the words 'step,' 'great,' 'great-great,' or 'grand,' or the spouse of any of these persons..." is incorrect and should be replaced with the language in EAS 45-101(r)(1)(A).

Response:

The CDSS appreciates this comment, but disagrees and is not amending the regulations. The definition of "relative" in Section 31-002(r)(5) is an existing definition; only very minor editorial changes have been proposed to it in this regulations package. This definition of relative is correct pursuant to W&I Code sections 319(f)(2) and 361.3(c)(2).

3. Section 31-003(s)(1)

Comment:

The DPSS believes that the second sentence in this section should read, "This form, which is used in conjunction with the SOC 369A, constitutes..."

Response:

The CDSS agrees and is making this correction to the regulations.

4. Section 31-075.2

Comment:

The DPSS believes that this section should say, "The services care record shall be retained for a minimum of three years after the child's Kin-GAP case is closed."

Response:

The CDSS appreciates this comment, but disagrees and is not amending the regulations. Section 31-075.2 is an existing regulation that pertains to case records for all children receiving child welfare services, not just children who are eligible to receive Kin-GAP. In addition, proposed Section 31-075.22, which is a subsection of Section 31-075.2, already specifies that the case record of a child eligible to receive Kin-GAP shall be retained for a minimum of three years after the child's Kin-GAP case is closed.

5. Section 31-205.1(h)

Comment:

The DPSS believes that this section should read, "If family reunification services are not recommended, and the permanency plan for the child is a kinship guardianship, the following must be documented in the assessment:"

Response:

The CDSS appreciates this comment, but disagrees and is not amending the regulations. The proposed language is correct when read within the context of the existing regulations. Existing Section 31-205.1 already states that "the social worker shall document the following assessment information," prior to listing the required information. Proposed Section 31-205.1(h) is another item in that listing and is consistent with how the other items are presented.

6. Section 31-425.42

Comment:

The DPSS mentions that this section states the relative caregiver will be given a copy of the SOC 369/369A, but it does not state that the relative caregiver must sign them.

Response:

The CDSS appreciates this comment. The purpose of Section 31-425-42 is to require that both written and verbal information regarding the SOC 369 and SOC 369A forms be given to a relative caregiver. At this point, the relative caregiver is simply being provided with information in order to be able to make a future decision about whether or not to proceed with the process of becoming a kinship guardian and entering into a negotiated agreement.

In addition, at its own discretion, CDSS has added W&I Code sections 361.5(g)(2), 366.21(i)(2), 366.22(c)(2) and 366.25(b)(2) to the Reference line at the bottom of Section 31-425. These sections require that the relative caregiver be provided with information regarding the permanency options of guardianship and adoption prior to establishing legal guardianship or pursuing adoption. In the case of a child eligible for Kin-GAP, these sections also require that the relative caregiver be informed about the terms and conditions of the negotiated Kin-GAP agreement. (The SOC 369 and SOC 369A forms together constitute the negotiated Kin-GAP agreement).

7. Section 31-425.441(c)

Comment:

Regarding mental health services, the DPSS wants to know if the county staff should be referring the guardian to Riverside County Mental Health when they have concerns or needs.

Response:

The CDSS appreciates this comment, but it is outside of the scope of this regulations package. However, it is at the county's discretion to determine how information regarding medically necessary specialty mental health services is to be provided to the relative caregiver.

8. Section 31-503.22

Comment:

The DPSS wants to know how county staff would be able to implement this regulation as stated in this section. In addition, clarification is needed in determining how an eligibility worker will know whether or not a referral will compromise the parent's ability to meet the needs of other children in the (parent's) household who may be at risk of removal.

Response:

The CDSS appreciates this comment and, at its discretion, is amending proposed Section 31-503.22 to add "Kin-GAP" to modify "negotiated agreement" for clarity. Although implementation questions are outside of the scope of this regulations package, CDSS notes the following with regard to the comment about how county staff would be able to implement proposed Section 31-503.22:

Counties are currently required, no less frequently than every two years, to consult with relative caregivers receiving Kin-GAP on behalf of eligible children regarding the terms of the Kin-GAP negotiated agreement pursuant to W&I Code sections 11364(b)(1) and 11387(b)(1). Proposed Section 31-503.22 would require the social worker or other appropriate county representative to review, at this reassessment, the prior determination that it is in the best interest of the child not to refer the child's parent(s) to the local child support agency. This proposed requirement is both logical and appropriate, since the purpose of the reassessment is to review the needs of the child as well as the circumstances of the kinship guardian. The proposed requirement is also consistent with Family Code section 17552(c).

The CDSS also notes the following with regard to the comment that clarification is needed regarding "how an eligibility worker will know whether or not a referral will compromise the parent's ability to meet the needs of other children in the (parent's) household who may be at risk of removal":

This is an existing requirement that social workers must meet for foster children. Please see existing Sections 31-503.111(c) and 31-503.112(c). However, CDSS recognizes that it may be more difficult to obtain relevant family information about children who receive Kin-GAP, since these children have had their dependency or wardship dismissed and are no longer receiving monthly social-worker visits. As a result, CDSS is amending proposed Section 31-503.113(b) to add "if known" at the end, as follows: "The parent's ability to meet the needs of other children in the household who may be at risk of removal, **if known.**" Nonetheless, the appropriate county worker is expected to make an effort to obtain this information by, for example, consulting with the child's former social worker, if possible.

9. Section 31-503.221

Comment:

The DPSS believes the word "and" in this section should be "or," as "or" is the intention that the County makes this determination at the point in time that the child enters Kin-GAP.

Response:

The CDSS appreciates this comment, but is not amending proposed Section 31-503.221 as suggested. The structure and intent of this section is consistent with existing Section 31-503.211. Moreover, the termination of a child's Kin-GAP benefits wouldn't necessarily mean that it would automatically be in the child's best interest to refer the child's case to the local child support agency. The county would *also* have to determine which course of action regarding child support would be in the child's best interest at that point.

However, at its own discretion, CDSS is amending proposed Section 31-503.221 to delete an unnecessary word "if" and to add the term "also" to clarify that both requirements in the provision must be met before referring the child's case to the local child support agency. Please also see the final modification under proposed Section 31-503.221.

In addition, at its own discretion and in response to concerns expressed in this comment, CDSS is adding proposed Section 31-503.222 to provide that *if at any time* the social worker or other appropriate county worker determines that it is no longer contrary to the child's best interest, the appropriate county worker is to refer the child's case to the local child support agency. Please also see the final modification under proposed Section 31-503.221.

Finally, CDSS disagrees with the comment that "'or' is the intention that the County makes this determination at the point in time that the child enters Kin-GAP." Prior to the child entering Kin-GAP, the determination of whether it is in the child's best interest to make a referral to the local child support agency is made pursuant to existing Section 31-503.1 and proposed Section 31-503.113.

10. Section 45-601(r)(2)(A)

Comment:

The DPSS believes that the language in this section is incorrect and should be replaced with the language in EAS 45-101(r)(1)(A).

Response:

The definition of relative in 45-601(r)(2)(A) is reflective of the definition of relative in W&I Code section 11391(c)(1). No change is required as the language in Section 45-601(r)(2)(A) is consistent with the statutory law related to the definition of a relative.

11. Section 45-602.11

Comment:

The DPSS believes that this section contradicts the requirement in ACL 11-15 (page 6), which states, "For new cases to be eligible for the federally funded Kin-GAP Program, the child must be eligible for Title IV-E foster care maintenance payments prior to the establishment of the legal guardianship during at least a six-consecutive month period in which the child resided in the approved home of the prospective relative guardian while under the jurisdiction of the juvenile court or a voluntary placement agreement." Therefore, they prefer the regulation to allow the guardianship to be established prior to the six months.

Response:

Nothing in the proposed regulation is inconsistent with ACL 11-15. Section 45-602.11 clarifies that the child must reside in the approved home of the relative for a minimum of the six consecutive months immediately prior to the court dismissing dependency. Nothing in the regulation dictates when the guardianship must be granted or prevents the court from establishing the guardianship during the six month period.

12. Section 45-602.11

Comment:

The DPSS believes that the "immediately prior to the dismissal of dependency" wording in this section could be an issue for some of their cases. They also want to clarify that this requirement should be for federal and non-federal cases.

Response:

Federal law provides the State with flexibility regarding the implementation of this particular provision. Under this flexibility, using its regulatory authority, CDSS has clarified this provision to ensure compliance with federal Kin-GAP requirements. Additionally, this requirement is for federal and non-federal Kin-GAP cases. For clarity, CDSS has amended this regulation to include "wardship."

13. Section 45-602.5

Comment:

The DPSS wants to know if the reference to Section 42-201 et seq refers to the current CalWORKs version or the old AFDC version.

Response:

This refers to the 1996 AFDC regulations. CDSS will add clarification in handbook.

14. Section 45-602.52

Comment:

The DPSS wants to clarify that the regulation in this sections means a child may retain up to \$10,000 in cash and \$2000 in other countable property.

Response:

The \$10,000 amount is in addition to the property limits described in the 1996 AFDC regulations.

15. Section 45-602.6

Comment:

The DPSS wants to clarify that the reference to Sections 42-430 through 42-435 is meant to refer to the current CalWORKs version or the old AFDC version.

Response:

The sections are referring to the 1996 AFDC regulations. CDSS will add clarification in handbook.

16. Sections 45-604.11 and .2

Comment:

The DPSS wishes to have these sections clarify which requirement, or both, does the child need to meet.

Response:

The child needs to meet both Sections 45-604.11 and .2.

17. Section 45.604.2

Comment:

The DPSS wants to know if this section means that if a child was originally removed and determined federally eligible under a voluntary placement, and

made a dependent within the 180 days, the child does not need a contrary to welfare statement under the dependency.

Response:

The CDSS appreciates this comment, but it is outside of the scope of this regulations package. This comment relates to findings and orders related to federal foster care eligibility and not to Kin-GAP eligibility, which is the subject of this proposed regulation.

18. Section 45-604.4

Comment:

The DPSS wants to know if the reference to an "IV-E child" in this section means a child receiving IV-E Kin-GAP or a child eligible to IV-E Foster Care or if it means that an otherwise non-federal child whose sibling is eligible for IV-E Foster Care can receive IV-E Kin-GAP if the two siblings are placed with the same relative guardian.

Response:

This section is referring to an IV-E Kin-GAP eligible child.

19. Section 45-604.5(d)

Comment:

The DPSS needs clarification if FC 3 in this section refers to the initial FC 2 or the most recent FC 2.

Response:

Section 45-604.5(d) is referring to the initial FC 2.

20. Section 45-604.5(o)

Comment:

The DPSS wants to know if the "criminal background and child abuse registry checks" mentioned in this section mean the summary of these such as provided on pages 3 and 4 of form SOC 815 or the actual responses from CLETS, CACI and FBI.

Response:

It is sufficient for the Kin-GAP eligibility file to contain the SOC 815 forms. However, the county must be able to provide the actual clearance documentation, as needed.

22. Section 45-604.5(p)

Comment:

The DPSS needs clarification regarding the case plan update mentioned in this section, if a copy of the case plan is required for the eligibility case or there is no KG eligibility. And, DPSS wants to know if this is only for cases established on or after the date these regulations are published.

Response:

Nothing in the regulation requires that a copy of the case plan be maintained in the child's eligibility file in order for the child to be eligible for Kin-GAP. Rather, the case file, as a whole, must contain the documentation listed. Counties have the flexibility to determine whether the case plan is maintained in the case management file, the eligibility file, etc., as long as the documentation is maintained and is available if needed to demonstrate eligibility.

23. Section 45-605.2

Comment:

The DPSS wants to know if this section means that when a child is removed by voluntary placement and determined IV-E that the court could grant guardianship in lieu of dependency and the child can receive IV-E Kin-GAP.

Response:

W&I Code section 11386 requires the child to be removed from the home pursuant to a voluntary placement or as a result of a judicial determination "including being adjudicated" a dependent or ward. It does not, however, require that the child be adjudicated a dependent as a condition of Kin-GAP eligibility. Therefore, if the court takes jurisdiction and grants the guardianship in lieu of adjudicating the child as a dependent, the child may be eligible for federal Kin-GAP, assuming all other eligibility conditions are met. However, W&I Code section 11363 requires the child to be adjudicated a dependent or ward. Therefore, under the state program, there must be an adjudication of dependency in order to be eligible for Kin-GAP. CDSS has amended Section 45-604.2 to clarify eligibility.

24. Section 45-605.4(h)

Comment:

The DPSS believes this section should read, "SOC 369A 'Kinship-Guardianship Assistance Payment Program Agreement Amendment.'"

Response:

The CDSS agrees and the change will be made to the regulations.

25. Section 45-605.4(l)

Comment:

The DPSS needs clarification regarding the case plan update mentioned in this section, if a copy of the case plan is required for the eligibility case or there is no KG eligibility. And, DPSS wants to know if this is only for cases established on or after the date these regulations are published.

Response:

Nothing in the regulation requires that a copy of the case plan be maintained in the child's eligibility file in order for the child to be eligible for Kin-GAP. Rather, the case file, as a whole, must contain the documentation listed. Counties have the flexibility to determine whether the case plan is maintained in the case management file, the eligibility file, etc., as long as the documentation is maintained and is available if needed to demonstrate eligibility.

26. Section 45-606.11

Comment:

The DPSS wants to know if the KG 2 must be signed within 30 days or by the end of the calendar month following the nonminor former dependent's 18th birthday.

Response:

Section 45-606.11 means 30 working days. CDSS has amended the regulations for clarity.

27. Section 45-607.1

Comment:

The DPSS believes that there needs to be a paragraph denoting the Beginning Date of Aid for a child who was receiving neither Foster Care nor CalWORKs

prior to Kin-GAP. Also, DPSS wants to have addressed the situation where the foster care payee is not the same person/entity as the KG guardian.

Response:

Cases receiving neither foster care or CalWORKs payments prior to Kin-GAP would be county funded and the CDSS doesn't have the authority to establish regulations related to county payments. Additionally, Section 45-607.11 also applies to youth receiving foster care who were placed with a relative/NREFM, who is the prospective Kin-GAP guardian, in a certified home where the foster family agency was the payee.

28. Section 45-607.2

Comment:

The DPSS wants to know if this section means the Kin-GAP youth cannot be his or her own payee if he or she is living apart from the guardian, such as when such a youth lives on campus while attending college.

Response:

In the Kin-GAP Program there are no circumstances which allow the youth to be his or her own payee.

29. Section 45-607.3

Comment:

The DPSS states that it would be helpful to note the fact that if income received in the calendar month is reported after the calendar month, an overpayment for the calendar month in which the income was received shall be assessed.

Response:

This regulation package doesn't address Kin-GAP overpayments. However, Kin-GAP overpayments will be the subject of future regulatory action.

30. Section 45-607.51

Comment:

The DPSS wants to know if a case has to be changed to a non-federal if a parent moves into the home.

Response:

Federal and non-federal Kin-GAP cases allow the parent to live in the home so funding source would not need to be changed.

31. Section 45-607.6

Comment:

The DPSS wants to know if the references to Sections 44-100 through 44-133 and Section 44-207 refer to the current CalWORKs regulations or the old AFDC regulations.

Response:

This refers to the 1996 AFDC regulations. CDSS will add clarification in handbook.

32. Section 45-607.72

Comment:

The DPSS wants to know if Supplemental Security Income (SSI) as disability based unearned income. And, since a person can get SSI and Kin-GAP concurrently, DPSS wants to know if they can give recipients disability based income deductions or must they count the whole amount. Also, DPSS believes that SSI is offset against Kin-GAP.

Response:

The CDSS will add Section 45-607.73 to the regulations addressing how SSI disability based income benefits, using disability based income deductions, should be offset against the State Kin-GAP payment.

33. Section 45-607.84

Comment:

The DPSS wants to know if this section should read, "After the conclusion of the hearing on the 388 petition, dependency jurisdiction is established/re-established by the juvenile court..."

Response:

In order to be in compliance with California law the language that is currently in Section 45-607.84 must be used.

j) 15-Day Renotice Statement

Pursuant to Government Code section 11347.1, a 15-day renotice and complete text of modifications made to the regulations were made available to the public following the public hearing. The following testimony was received as a result of the 15-day renotice.

Comments from the Riverside County Department of Public Social Services (DPSS)

1. Section 45-602.1

Comment:

The DPSS wants to know if approved Kin-GAP applications for children whose relative homes had been approved for six months, but which had lapsed and been re-approved only a month or two prior to the termination of dependency, now need to be terminated. In addition, DPSS believes the phrase "immediately prior to dismissal of dependency" seems contradictory because if there is no six months residence immediately prior to dismissal, then there is no state or federal Kin-GAP.

Response:

The CDSS believes when there are lapses caused due to a late annual approval, technically the approval is still in effect during the lapses since the approval stays in effect for up to two years. Currently, Kin-GAP cases where it was initially determined that the approval requirement had been met aren't to be terminated.

2. Section 45-607.2

Comment:

The DPSS wants to know what constitutes "no longer providing support and care" and if they have to prove it or just reasonably suspect it in Section 45-607.212. In addition, DPSS wants to know how to verify Section 45.607.213.

Response:

If there is a suspicion that the guardian is no longer providing support and care it would be the county that would make the determination as to whether or not the guardian is continuing to provide support and care. Additionally, it's the responsibility of the guardian to report any changes to the county when the youth is no longer meeting one of the Section 45.607.213 requirements.

3. Section 45-607.63

Comment:

The DPSS believes that a 16 year-old is not a non-minor.

Response:

The CDSS agrees that a 16 year-old is not a non-minor and will amend this regulation to provide clarity.

4. Section 45-607.72

Comment:

"For a child or nonminor former dependent receiving federally funded Kin-GAP, SSI/SSP or Social Security Survivor's benefits are not to be counted as income. The Social Security Administration will offset the SSI/SSP or Social Security Survivor's payment against the federal Kin-GAP payment." The DPSS states that the Social Security Administration (SSA) will offset SSI by the Kin-GAP payment, but doesn't think they will do so with the Retirement, Survivor's, and Disability Insurance (RSDI), as RSDI is not based on income eligibility. And, DPSS states that if the initial FC 2 on file is needed (when they list the docs for the case file), the list should state "initial FC 2."

Response:

The SSA ultimately decides whether or not the RSDI benefit will be offset. Regardless of the SSA offset rules when the child is receiving one of the payment types referenced in Section 45-607.72, the county is required to issue the entire federal Kin-GAP payment to the guardian.

The CDSS appreciates the comment related to the FC 2 but is not amending the section as suggested.